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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEVIN J. MIRCH, ESQ.

Plaintiff,

v.

Case No. 3:05-CV-000641-RLH-RAM

BRUCE BEESLEY, ROB BARE,
BRIDGET ROBB PECK,
DONALD CHRISTENSEN, STATE BAR
OF NEVADA, DOES I -X
A-Z Corporations,

Defendant.

REPLY MOTION FOR ENLARGEMENT OF TIME IN
WHICH TO FILE PLAINTIFF'S OPPOSITION TO MOTION FOR
SANCTIONS (Fed.R.Civ.P.11)

COMES NOW, Plaintiff, KEVIN MIRCH, ESQ., by and through his counsel
of record, MIRCH & MIRCH, MARIE C. MIRCH, ESQ., and hereby replies to the
Opposition to Motion for Enlargement of Time to File Plaintiff's Opposition to
Motion for Sanctions.

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1 This Reply is based on the following memorandum of pints and authorities,
2 exhibits, affidavits and pleadings on file herein.

3 DATED this 8th day of June , 2006.

4 MIRCH & MIRCH

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6 By: /s/
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POINTS AND AUTHORITIES

FACTS

a. Introduction

Marie Mirch, on behalf of Plaintiff, Kevin Mirch, has filed a motion for enlargement of time for Mr. Mirch to file his opposition to the motion for sanctions filed by the defendants in this matter. In that motion, it is well established that Mr. Mirch suffered a stroke on April 1, 2006, and is physically incapable of reading or drafting any motions in this case or any case at this time. This is supported not only by letters from two of Mr. Mirch's treating physicians, but also the affidavit of Marie Mirch, who is Mr. Mirch's law partner and wife.

Defendant has opposed the motion, agreeing that extensions of time may be granted for good cause, but taking the position that Mr. Mirch in fact has not had a stroke, and is somehow feigning a condition to selectively manage his caseload¹. This argument not only lacks merit, is frivolous and a violation of FRCP Rule 11. Counsel offers no evidence whatsoever to support the position that Mr. Mirch did not have a stroke. Rather, Counsel asks this court to condone the conduct of which this entire case is based, which is the disparate treatment of Mr. Mirch by the legal community and the Nevada State Bar.

b. Plaintiff has provided evidence of Mr. Mirch's current health condition

In the opposition to motion for enlargement of time, the Defendants falsely state that there is no evidence, other than Mr. Mirch's own representation, that Mr. Mirch has actually suffered a stroke. This statement is blatantly false. Mrs. Mirch provided an affidavit explaining in detail the events surrounding Mr. Mirch's stroke. Mrs. Mirch has first hand personal knowledge of the event as she took her husband to St,

¹ Defendant also claim that the motion was not served. This is untrue as electronic filing provides electronic service to counsel, and per the United States District Court e-filing trainer and coordinator, mail service is only required on those who do not receive the document electronically.

1 Mary's emergency room, witnessed his suffering, was present when most of the
2 doctors treated Mr. Mirch, and continues to assist him in his rehabilitation. This
3 information is contained in the affidavit of Marie Mirch filed in support of the motion.
4 Defendants choose to completely ignore this material.

5 Mr. Mirch's condition is further explained by correspondence from two of his
6 treating doctors, Dr. Conley, who confirms the fact that Mr. Mirch suffered a stroke
7 in April, and Dr. Meier, who is treating Mr. Mirch for his loss of vision and
8 comprehension. *See Exhibits B and C attached to Motion for Enlargement.*
9 Defendants take issue because neither of the doctors who have offered support for Mr.
10 Mirch are neurologists. This argument also lacks merit. Mr. Mirch was seen by at
11 least 19 doctors during his hospital stay, neurologists, cardiologists, family and
12 practice physicians. It is not necessary that a doctor from each discipline verify the
13 fact that Mr. Mirch had a stroke, nor is it necessary to make Mr. Mirch's entire
14 medical file a matter of public record. Dr. Conley's note, and the affidavit of Marie
15 Mirch establish the fact that Mr. Mirch suffered a stroke. Dr. Meier explains the
16 impairments Mr. Mirch suffers as a result of the stroke, and the fact that Mr. Mirch is
17 engaged in visual rehabilitation therapy that will take at least 12 to 48 weeks to
18 complete. These circumstances well satisfy the requirement of good cause for the
19 extension request. If this Court deem it necessary to receive further evidence of Mr.
20 Mirch's condition, it may do so by an in camera review of medical records, but it is
21 not necessary or appropriate to violate Mr. Mirch's privacy rights by making his entire
22 personal medical record a public document.

23 **b. Mr. Mirch is not being selective in his caseload.**

24 Next, Defendants make the unfounded accusation that Mr. Mirch is being
25 selective in his caseload. This is also untrue. As presented in the motion for
26 enlargement of time, numerous extensions have been sought and granted in other cases
27 in the Second Judicial District Court, The United States District Court, the Supreme

1 Court of Nevada, the Ninth Circuit Court of Appeals, and the United States Supreme
2 Court . The claim that Mr. Mirch cannot read or write any briefs is consistent with
3 these extension requests.

4 Defendants also try to make an argument based on deposition notices that were
5 sent out in a state action which Mr. Mirch is also a party. Those notices were sent
6 before it was known the extent of Mr. Mirch's infirmity or that he would not be able
7 to work for several months. Regardless, the deposition notices were signed by Mrs.
8 Mirch who is willing and ready to take the depositions in Mr. Mirch's absence.
9 However, because Mr. Mirch is a party, those depositions have been cancelled due to
10 Mr. Mirch's health. There are no cases for which Mr. Mirch is actively participating
11 at this time, as he is required to spend at least 8 hours a day on his visual rehabilitation
12 therapy. Mrs. Mirch is handling as much of the case load as is possible, and those
13 cases involving Mr. Mirch, extensions have been requested.

14 **c. Mr. Mirch did not prepare the writ of mandamus**

15 _____Defendants also take issue with the fact that Mrs. Mirch prepared a writ of
16 mandamus to the Ninth Circuit Court of Appeals, which included a 199 page excerpts
17 of record. In their opposition, Defendants somehow apply Mrs. Mirch's work to Mr.
18 Mirch's ability or inability to work. The fact that Mrs. Mirch prepared a writ does not
19 discredit the argument presented in the motion for extension of time. Mr. Mirch is the
20 Plaintiff in this matter, who has intricate knowledge of the improper conduct visited
21 upon him over more than a decade by the Defendants in this matter. Mrs. Mirch does
22 not have this knowledge. Therefore, it is Mr. Mirch who must prepare the opposition.
23 Mr. Mirch is entitled to represent himself and to the counsel of his choice (that being
24 himself) by the Sixth Amendment. The filing of the writ by Mrs. Mirch addressed the
25 abuse of discretion by this Court in denying a man who had a stroke, cannot read or
26 write an accommodation to recover in order to file an opposition to the motions to
27 dismiss. This is an issue that Mrs. Mirch is competent to address. Also, Mrs. Mirch

1 did not author 199 pages, but rather numbered and copied the pleadings in this case
2 to prepare the excerpt. This has not bearing on Mr. Mirch's cognitive or visual ability
3 pertinent to the matter presently before this Court.

4 LEGAL ANALYSIS

5 F.R.C.P. 6(b) of the Federal Rules of Civil Procedure allows necessary
6 enlargements of time "**for cause shown**". In this case, there is good cause in the fact
7 that Mr. Mirch has suffered a very serious health condition, that being a stroke. A
8 stroke is a serious matter that can be life threatening. It is not to be brushed aside by
9 frivolous arguments of counsel and their unsupported claim that Mr. Mirch did not
10 suffer the same. Defendants are only trying to take advantage of a serious situation
11 involving Mr. Mirch's health and use it to their advantage. Apparently, per
12 Defendants position nothing short of death constitutes good cause when Mr. Mirch is
13 concerned.

14 CONCLUSION

15 Defendants' Opposition to Motion for Enlargement of time is frivolous and filed
16 in bad faith. If the argument presented by counsel were to be believed, then Mr. Mirch
17 would have feigned a stroke, and lost his vision in order to avoid the deadline for
18 opposing a motion. Maybe counsel is trying to be facetious, but does so in very poor
19 taste. The criteria for an enlargement of time as provided by FRCP is "good cause".
20 Counsel having a stroke and suffering severe visual impairment clearly constitutes
21 good cause. Further, there is no claim that Defendants are prejudiced in any manner
22 whatsoever by an extension request. In fact, Defendants concede the same when they
23 argue that the motions to dismiss must be decided prior to the motion for sanctions.

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DATED this 8 day of June, 2006.

By: /s/
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